

REMARKS/ARGUMENTS

Obviousness - Section 103(a) Rejection

The Examining Attorney has rejected claims 1-6 and 8 as being obvious, referring to a three (3) reference combination including Early Payment, Lawlor (5,870,724), and further in view of Storey (6,578,012). The Applicant respectfully requests that the Examiner reconsider and remove the obviousness rejection based on the claim amendments set forth above, as well as the arguments, points and authorities set forth below.

The Applicant submits that the references do not include all the elements in the claims as amended, and there is therefore no prima facie case for obviousness.

The Applicant further submits that the new claims submitted above are in a position for allowance.

In the U.S. Court of Appeals for the Federal Circuit case of *In Re: Lee*, 61 U.S.P.Q. 2d 1430, decided January 18, 2002, the Federal Circuit held:

... Thus, when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The Board cannot rely on conclusory statements when dealing with particular combinations

of prior art and specific claims, but must set forth the rationale on which it relies.

The examining attorney has therefore failed to meet the requirement to set forth with specificity the general knowledge in the art to enable a finding that the person having ordinary skill in the art would make such combination.

As the PTO recognizes in MPEP 2142:

The legal concept of *prima facie* obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process.... The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of non-obviousness.... The initial evaluation of *prima facie* obviousness thus relieves both the Examiner and Applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention.

Prior Art Made of Record and Not Relied Upon

The Applicant notes the prior art made of record but not relied upon and asserts that for the reasons set forth above, the claims are allowable over the art made of record.


Conclusion

Applicant is submitting a Request for Continued Examination (RCE) herewith as well as any required fees.

Applicant therefore submits Claims 1-6 and 8 -12 are in a position to proceed to allowance.

Respectfully submitted,

Dated: 1-18-07

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